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EXAMINER

DELCOTTO, GREGORY R

ART UNIT PAPER NUMBER

1751

DATE MAILED: 08/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/643,018

Applicant(s)

KLAERS ET AL.

Examiner

Gregory R. Del Cotto

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed 6/27/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-28, 30-32, 34-48 and 50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-28, 30-32, 34-48 and 50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. Claims 25-28, 30-32, 34-48, and 50 are pending. Applicant's arguments and amendments filed 6/27/06 have been entered.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/27/06 has been entered.

Objections/Rejections Withdrawn

The following objections/rejections set forth in the Office action mailed 3/27/06 have been withdrawn:

The rejection of claims 25-28, 30, 31, and 34-50 under 35 U.S.C. 103(a) as being unpatentable over Addison et al (US 5,801,137) has been withdrawn.

The rejection of claim 32 under 35 U.S.C. 103(a) as being unpatentable over Addison et al (US 5,801,137) as applied to claims 25-28, 30, 31, and 34-50 above, and further in view of Rolando et al (US 5,876,514), has been withdrawn.

The rejection of claims 25-28, 30-32, and 34-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,387,870 has been withdrawn due to the filing of a terminal disclaimer.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 25-28, 30-32, 34-48, and 50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification, as originally filed, provides no basis for "...less than about 9" as recited by instant claim 25. While the specification does provide basis for a pH of less than or equal to 9, the specification provides no basis for less than about 9 as now recited by instant claim 25. Note that, claims 26-28, 30-32, 34-48, and 50 have also been rejected due to their dependency on claim 25.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section

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351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 25-28, 30, 31, 38-46, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menke et al (US 5,759,974).

Menke et al teach block-form cleaners for flush toilets which consist of at least two masses of different composition, one of the masses being at least partly surrounded by the other masses. See Abstract. Surfactants may be used in the compositions and include anionic, nonionic, cationic, and amphoteric surfactants. Suitable anionic surfactants include the alkyl benzene sulfonates containing C9-C15 as alkyl groups, etc. Suitable nonionic surfactants include adducts of 1 to 100 moles of ethylene oxide with 1 mole of an aliphatic or alkyl aromatic compound essentially containing 10 to 20 carbon atoms from the group of alcohols, alkyl phenols, alkyl glucosides, etc. See column 4, lines 1-35.

Additionally, erosion regulators may be used in the compositions which may control the consumption of the cleaning blocks in use in such a way that they remain effective to the end of their intended useful life. Preferred regulators are solid long-

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chain fatty acids, polyethylene glycols such as those with molecular weights of 1,500 to 50,000, etc., which are present in amounts from about 2% by weight to about 15% by weight. See column 7, lines 20-40. Also, the compositions may contain inorganic salts which improve the consistency, erosion behavior, and homogeneity of the blocks.

Additionally, the salts can enhance the cleaning effect of the surfactants and act as hardness-binding agents. See column 7, lines 20-69. Disinfectants may be used in the compositions including sodium percarbonate, sodium perborate, etc. Note that, the Examiner maintains that percarbonates and perborates also function as bleaching agents. See column 5, lines 1-25. Complexing agents may also be used and include aminopolycarboxylic acid, polyphosphonic acid, etc. See column 5, line 60 to column 6, line 20. Note that, the Examiner asserts that the teachings of Menke et al would suggest compositions having the same pH of the composition in aqueous solution as recited by the instant claims because Menke et al suggest compositions containing the same components in the same amounts as recited by the instant claims.

Note that, with respect to instant claim 25, this is a product by process claim; even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Note that, the Examiner asserts that the teachings of Menke et al would suggest

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compositions having the same properties as recited by the instant claims because Menke et al suggest compositions containing the same components in the same components as recited by the instant claims.

Menke et al do not teach, with sufficient specificity, a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar properties with respect to other disclosed components, because the broad teachings Menke et al suggest a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims.

Claims 25-28, 30, 31, 34, 38-48, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO99/02638.

'638 teaches detergent compositions, including laundry, fabric care, dishwashing, and hard surfaces cleaner compositions which provide effective and efficient cleaning of everyday body stains and/or soils and provide sanitization of the treated surfaces. See

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Abstract. Suitable surfaces include those such as bathtubs, toilet bowl, and dishware. See page 2, lines 1-5. The detergent compositions can be in the form of a liquid, paste, gel, bars, tablets, etc. See page 8, lines 2-35. Suitable bleaching agents include percarbonates, perborates, persulfates, etc. See page 18, lines 1-10. The detergent compositions generally comprise a surfactant system wherein the surfactant can be selected from the group consisting of nonionic, anionic, cationic, or ampholytic surfactants. See page 29, lines 30-40. The surfactant is typically present at a level of from 0.1 to 60% by weight. Suitable nonionic surfactants include the condensation products of primary and secondary aliphatic alcohols with from about 1 to about 25 moles of ethylene oxide, alkylpolysaccharides having from about 10 to about 16 carbon atoms, etc. See page 30, lines 1 to page 31, line 50. Suitable anionic surfactants include linear alkyl benzene sulfonates, etc. Suitable starting materials would include natural fatty substances as derived from tallow, palm oil, etc. See page 33, lines 30-40.

The detergent compositions may also contain one or more iron and/or manganese chelating agents including amino carboxylates, amino phosphonates, nitrilotriacetates, etc. See page 47, lines 10-40. Suds suppressors such as silicones and silica-silicone mixtures may also be used in the compositions. See page 48, lines 15-40. Other components may also be used including soil-suspending agents, optical brighteners, abrasives, etc., may be used in the compositions. See page 49, lines 10-40. Suitable polymeric materials suitable as soil-suspending agents include polyethylene glycol having a molecular weight from 1000 to 10,000. See page 50, lines 10-30. The method of cleaning is preferably carried out at 5 degrees Celsius to 95

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degrees Celsius and the pH of the treatment solution is preferably from 7 to 12. See page 59, lines 1-10.

Note that, with respect to instant claim 25, this is a product by process claim; even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113. Note that, the Examiner asserts that the teachings of '628 would suggest compositions having the same properties as recited by the instant claims because '628 suggests compositions containing the same components in the same components as recited by the instant claims.

'628 does not teach, with sufficient specificity, a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims, with a reasonable expectation of success

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and similar properties with respect to other disclosed components, because the broad teachings of '628 suggest a solid detergent composition containing an anionic surfactant, an alkali metal salt, alkyl polyglycoside, a nonionic surfactant, a hardening agent, and the other requisite components of the compositions in the specific proportions as recited by the instant claims.

Claims 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Menke et al (US 5,759,974) or WO99/02638 as applied to the rejected claims above, and further in view of Kott et al (US 6,303,556).

Menke et al or '638 are relied upon as set forth above. However, neither reference teaches the use of a magnesium salt of alkyl benzene sulfonate in addition to the other requisite components of the composition as recited by the instant claims.

Kott et al teach hard surface cleaning compositions which include modified alkylbenzene sulfonate surfactant mixtures. See Abstract. The alkylbenzene sulfonate surfactants can be neutralized with an suitable alkali. Thus, the neutralization step can be conducted using alkali selected from sodium, potassium, ammonium, magnesium, and substituted ammonium alkalis and mixtures thereof. Potassium can assist solubility, magnesium can promote soft water performance, and substituted ammonium can be helpful for formulating specialty variations of the of the instant surfactants.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a magnesium salt of alkyl benzene sulfonate in the cleaning composition taught by Menke et al or '638, with a reasonable expectation of success, because Kott et al teach the equivalence of magnesium alkylbenzene sulfonate to

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sodium alkylbenzene sulfonate as a cleaning surfactant, and that the use of a magnesium salt of alkyl benzene sulfonate promotes soft water performance in a similar cleaning composition and further, Menke et al or '638 teach the use of alkylbenzene sulfonate surfactants in general. Note that, the Examiner asserts that the teachings of Menke et al or '638, both in combination with Kott et al, would suggest compositions having the same molar ratio of sodium salt to magnesium salt as recited by instant claims 36 and 37.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Menke et al (US 5,759,974) or WO 99/02638 as applied to the rejected claims above, and further in view of Rolando et al (US 5,876,514).

Menke et al or '638 are relied upon as set forth above. However, Menke et al or '638 do not teach use of an acetate salt as recited by instant claim 32.

Rolando teach an alkaline warewashing detergent composition that can contain a critical amount of a nonionic rinse agent that when used in automatic warewashing machines permits the use of a potable water rinse without the addition of a separate rinse agent. The detergent can be in the form of a particulate, pelletized or a block solid. See Abstract. The composition may contain a solidifying agent when used as a solid block. The solidifying agent may provide for controlled dispensing by using solidification agents which have a relative aqueous solubility. Suitable agents which may be hardening/solidifying agents include urea, calcium carbonate, sodium acetate, etc. These solidifying agents are used in amounts which promote solubility and the

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requisite structural integrity for the given application. See column 9, line 30 to column 10, line 40.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an acetate salt in the cleaning composition taught by Addison et al, with a reasonable expectation of success, because Rolando et al teach the use of hardening agents such as sodium acetate in a similar solid detergent composition which provide controlled dispensing and structural integrity and, further, Menke et al or '638 teach the formation of solid detergent compositions in general.

Response to Arguments

Applicant's arguments with respect to Addison or Addison in view of Rolando et al are moot in view of the withdrawal of these rejections and the new grounds of rejection as set forth above.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571)

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272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
August 24, 2006